

Remarks/Arguments

Reconsideration of this application is requested. This reply under 37 CFR 1.116 is being filed within two months of the final Office Action mailed on March 29, 2007. Applicant believes the application to be in condition for allowance. Should the Examiner disagree, applicant requests an Advisory Action at the Examiner's earliest convenience.

Claim Status

Claims 1-22 are pending. Since no claims are amended, added, or canceled, no listing of claims is required under 37 CFR 1.121.

Claim Rejections

35 USC 102

Claims 1, 7, 17 and 19 are rejected under 35 USC 102(a) as anticipated by Ryan (US 6,766,027). Applicant respectfully traverses these rejections.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *quoted in* MPEP 2131.

Independent claims 1 and 17 respectively recite, among other limitations, that the "woofer frame is an integral part of said baffle" and that "a woofer frame and a baffle are integrally formed as one unitary component of said loudspeaker". As shown in Figs. 1 and 2 of the drawings, a speaker assembly 2 comprises a baffle 4, a tweeter assembly 6 which is mounted on baffle 4 and which includes a high frequency transducer 10, and a woofer assembly 9 which includes a low frequency transducer 40. In accordance with the invention, woofer assembly 9 has a woofer frame 8 which is integrally formed with baffle 4.

In contrast, Ryan describes a speaker system which does *not* have a woofer frame that is integral with the baffle. Rather, the speaker system of Ryan has a woofer which is separate from, and is simply mounted on or secured to, the speaker frame, as discussed at length in Applicant's response of October 3, 2006.

The Examiner agrees. “[T]he woofer frame (15) of Ryan is *attached to* the baffle (17, 19).” See, p. 4 of Office action of January 29, 2007 (OA:4). However, the Examiner argues that separate elements connected together are necessarily “formed in one piece” and therefore “integral.” See OA:4 and Applicant’s Interview Summary, filed on February 12, 2007.

Applicant respectfully disagrees that separate elements connected together are necessarily “integral” for two reasons. First, the plain meaning of “formed in one piece” is inconsistent with Ryan’s attached, two-piece construction. Second, both the U.S. Patent Office and the Federal Circuit have long recognized the difference between separate elements connected together and integral elements. See, e.g., *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1344-1345 (Fed. Cir. 2001) (“Since the preferred embodiment of the invention...is a two-piece structure (the ‘link module portion’ being separate from the ‘cantilevered portion’), one would not expect to find a description of an ‘integral’ structure under the heading of ‘Description of A Preferred Embodiment’. Indeed, no one contends that the preferred embodiment could be an integral structure.”); *Carl Schenck, A.G. v. Nortron Corp.*, 713 F.3d 782 (Fed. Cir. 1983) (contrasting “four bolted pieces” with “integral” construction); and MPEP §2144.04. In fact, the patentability and infringement discussed in these cases hinged on this difference. In *Rexnord*, for example, the trial court interpreted the term “portion” to be separate and attached because all of the preferred embodiments included separate, attached portions. In the accused device, the portions were integral. With a long discussion of the structural differences between separate, attached portions and integral portions, the Federal Circuit overturned the trial court’s restriction of the claims because the “portions” were not claimed as either “separate” or “integral”.

The Examiner agrees with Applicant that Ryan discloses only a separate woofer frame and baffle that are connected together. The plain language of the definition cited by the examiner, the Federal Circuit, and the MPEP all acknowledge that separate elements bolted together are not “integral”. Therefore,

since it is clear that Ryan does not disclose at least these limitations of Applicant's claims 1 and 17, Applicant respectfully requests that their rejections, and the rejections to their dependent claims 2-7 and 18-22, be withdrawn.

35 USC 103

Claims 2-6, 8-16, 18 and 20-22 are rejected under 35 USC 103(a) as obvious over Ryan. The Examiner did not reject claims 1, 7, 17, and 19 based on obviousness, but Applicant independently submits that these claims, as well as claims 2-6, 8-16, 18, and 20-22, are not obvious over Ryan. To make out a prima facie case of obviousness:

...the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

MPEP §2142. Applicant submits that Ryan does not teach or suggest all of the limitations of the rejected claims, and one skilled in the art would not be motivated to modify Ryan to include the unsuggested limitations.

Independent claims 8 and 14 recite that "said woofer frame is an integral part of said baffle." As discussed above, this limitation is completely absent in Ryan. Further, the Examiner has not pointed out and Applicant cannot find any teaching or suggestion that the separate baffle and woofer frame in Ryan should be substituted with an integral baffle and woofer frame. In fact, Ryan teaches away from this substitution. As described at lines 57-62 of column 4 of Ryan, the woofer speaker which is in a fixed orientation relative to the speaker frame can be mounted in pivoting fashion, further suggesting that creation of the woofer frame as an integral part of the baffle would be contrary to the intent of Ryan, which is to provide a speaker system having speakers of variable orientation.

The Federal Circuit supported the nonobvious patentability of integral construction over the "four bolted pieces" of the prior art in *Carl Schenck*. 713 F.3d 782 (Fed. Cir. 1983). According to the Federal Circuit:

In its argument that the invention here is but making integral what had earlier been made in four bolted pieces, Nortron seeks to limit the focus of inquiry to a structural difference from the prior art and then to show that that difference *alone* would have been obvious. That effort is not proper under the statute, which requires that an invention be considered 'as a whole,'...[T]he present invention includes the inventor's elimination of the need for damping. Because that insight was contrary to the understanding and expectations of the art, the structure effectuating it would not have been obvious to those skilled in the art.

713 F.3d at 785; *See also Honeywell Int'l. v. Hamilton Sunstrand Corp.*, 370 F.3d 1131, 1145 (Fed. Cir. 2004) (because the controller of the prior art was not integral, claims were not obvious).

Like the inventions in *Carl Schenck* and *Honeywell*, Applicant's integral baffle and woofer frame provides many advantages over the prior art, and are contrary to the teachings of variable mounting. First, the integration of the baffle and woofer frame may allow a larger woofer to fit in a smaller baffle and speaker cabinet. *Specification*, ¶¶15, 37. Second, the integration may reduce the hand labor of installing the woofer frame. *Id.* ¶¶16, 41. Third, integration may improve the speaker's weather resistance. *Id.* ¶17. Fourth, integration can allow easy front mounting, which can decrease sound deflection normally caused by the ledge of the woofer frame, baffle, and woofer assembly mount. *Id.* ¶¶29, 35, 38. Fifth, integration can also be safer for the environment, as discussed in ¶38. Despite all of these advantages and solutions to long-felt needs, the Examiner cannot find any reference that teaches or suggests Applicant's claims. Because Ryan does not teach or suggest all the claim limitations of independent claims 1, 8, 14, and 17, Applicant respectfully requests that the rejections to these claims and dependent claims 2-7, 9-13, 15-16, and 18-22 be withdrawn.

Moreover, the dependent claims include additional distinguishing features. Claims 5, 12, 16 and 18 recite that the woofer frame "is created as an integral part of the baffle by molding the woofer frame and the baffle as a unitary component".

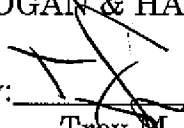
Claims 7, 13 and 15 recite that the non-metallic baffle "is reinforced to reduce flex". The Examiner states that Ryan includes "fasteners and support brackets to secure the speaker to the mounting surface." However, nowhere in the cited reference is there any discussion or suggestion of reinforcing the baffle to reduce flex. Applicant therefore respectfully submits that these claims are independently patentable over the cited reference.

Conclusion

This application is believed to be in condition for allowance. The Examiner is invited to telephone the undersigned to resolve any issues that remain after entry of this amendment. Any fees due with this response may be charged to our Deposit Account No. 50-1314.

Respectfully submitted,
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